

# HOUSE BILL 865

P2

(2lr1373)

## ENROLLED BILL

— *Health and Government Operations/Education, Health, and Environmental Affairs* —

Introduced by **Delegates Pena–Melnyk, Barnes, Braveboy, Bromwell, Cardin, Carr, Clagett, Guzzone, Healey, Huckler, Ivey, A. Kelly, Kipke, Lafferty, Mitchell, Mizeur, Nathan–Pulliam, Oaks, Olszewski, Reznik, Rosenberg, Stein, Summers, F. Turner, V. Turner, and Zucker**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **State Procurement – Disclosure of the Relocation of Jobs to a Foreign**  
3 **Country – Location of the Performance of Services**

4 FOR the purpose of ~~requiring a prospective bidder or offeror to disclose certain~~  
5 ~~information to the Department of General Services concerning plans to relocate~~  
6 ~~jobs to a foreign country when submitting a bid or an offer to a unit of State~~  
7 ~~government; requiring a contractor to notify the Department of certain job~~  
8 ~~relocations within a certain time period; prohibiting a certain contractor from~~  
9 ~~receiving certain benefits or incentives from the State under certain~~  
10 ~~circumstances; requiring a certain contractor to repay certain incentives and~~  
11 ~~benefits within a certain time period; requiring, under certain circumstances, a~~

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics* indicate opposite chamber/conference committee amendments.



1 bidder to disclose certain information regarding whether services required  
 2 under a procurement contract will be performed outside the United States;  
 3 prohibiting a public employer from knowingly contracting for certain services  
 4 unless the services are to be provided in the United States, except under certain  
 5 circumstances; requiring the Board of Public Works to adopt certain regulations;  
 6 providing for the application of this Act; providing that this Act may not impair  
 7 any existing obligation or contract right; defining certain terms; ~~providing for~~  
 8 ~~the termination of this Act;~~ and generally relating to State procurement and the  
 9 ~~disclosure of certain information concerning the relocation of jobs to foreign~~  
 10 ~~countries~~ disclosures regarding the location of the performance of services  
 11 required under procurement contracts.

12 BY adding to

13 Article – State Finance and Procurement  
 14 Section ~~11-401 through 11-403~~ to be under the new subtitle “~~Subtitle 4-~~  
 15 ~~Disclosure of the Relocation of Jobs to a Foreign Country~~” 12-110  
 16 Annotated Code of Maryland  
 17 (2009 Replacement Volume and 2011 Supplement)

18 Preamble

19 WHEREAS, The State of Maryland spends significant taxpayer dollars to  
 20 provide goods and services to maintain and operate the State; and

21 WHEREAS, Over 14,000,000 workers in the United States remain unemployed,  
 22 including over 200,000 Maryland residents; and

23 WHEREAS, When the State of Maryland spends taxpayer dollars, it should  
 24 collect relevant employment information from its contractors and vendors so as to aid  
 25 industries with the potential to employ more Maryland residents; and

26 WHEREAS, The State of Maryland must determine if its taxpayer dollars for  
 27 goods and services result in contractors and vendors exporting jobs outside the United  
 28 States; and

29 WHEREAS, Location disclosure legislation is necessary to ensure that taxpayer  
 30 dollars are invested in a way that helps struggling Maryland families and, in turn,  
 31 spurs economic recovery in the State of Maryland and the United States; now,  
 32 therefore,

33 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 34 MARYLAND, That the Laws of Maryland read as follows:

35 **Article – State Finance and Procurement**

36 **12-110.**

1           **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**  
2 **MEANINGS INDICATED.**

3           **(2) “PUBLIC EMPLOYER” MEANS:**

4                   **(I) A UNIT;**

5                   **(II) A COUNTY;**

6                   **(III) A MUNICIPALITY;**

7                   **(IV) A COUNTY BOARD OF EDUCATION; OR**

8                   **(V) A SPECIAL TAXING DISTRICT.**

9           **(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**  
10 **PARAGRAPH, “SERVICES” HAS THE MEANING STATED IN § 11-101(T) OF THIS**  
11 **ARTICLE.**

12                   **(II) “SERVICES” INCLUDES:**

13                           **1. CONSTRUCTION-RELATED SERVICES;**

14                           **2. ARCHITECTURAL SERVICES;**

15                           **3. ENGINEERING SERVICES; OR**

16                           **4. ENERGY PERFORMANCE CONTRACT SERVICES.**

17           **(B) THIS SECTION APPLIES TO A PROCUREMENT CONTRACT WITH AN**  
18 **ESTIMATED VALUE OF \$2,000,000 OR MORE.**

19           **(C) IN RESPONSE TO A SOLICITATION FOR A PROCUREMENT CONTRACT**  
20 **ISSUED BY A PUBLIC EMPLOYER, A BIDDER SHALL DISCLOSE TO THE PUBLIC**  
21 **EMPLOYER THE FOLLOWING:**

22                   **(1) WHETHER THE BIDDER OR ANY CONTRACTOR THAT THE**  
23 **BIDDER WILL SUBCONTRACT WITH TO PERFORM THE CONTRACT HAS PLANS, AT**  
24 **THE TIME THE BID IS SUBMITTED, TO PERFORM ANY SERVICES REQUIRED**  
25 **UNDER THE CONTRACT OUTSIDE THE UNITED STATES; AND**

26                   **(2) IF SERVICES REQUIRED UNDER THE CONTRACT ARE**  
27 **ANTICIPATED TO BE PERFORMED OUTSIDE THE UNITED STATES:**

1                    (I) WHERE THE SERVICES WILL BE PERFORMED; AND

2                    (II) THE REASONS WHY IT IS NECESSARY OR  
 3 ADVANTAGEOUS TO PERFORM THE SERVICES OUTSIDE THE UNITED STATES.

4                    (D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
 5 SUBSECTION, A PUBLIC EMPLOYER MAY NOT KNOWINGLY CONTRACT FOR THE  
 6 FOLLOWING SERVICES UNLESS THE SERVICES ARE TO BE PROVIDED IN THE  
 7 UNITED STATES:

8                    (I) ARCHITECTURAL SERVICES;

9                    (II) CONSTRUCTION SERVICES;

10                   (III) ENGINEERING SERVICES; OR

11                   (IV) ENERGY PERFORMANCE CONTRACT SERVICES.

12                   (2) A PUBLIC EMPLOYER MAY CONTRACT FOR SERVICES LISTED IN  
 13 PARAGRAPH (1) OF THIS SUBSECTION THAT ARE PROVIDED OUTSIDE THE  
 14 UNITED STATES, IF:

15                   (I) THE SERVICES ARE NOT AVAILABLE IN THE UNITED  
 16 STATES;

17                   (II) THE PRICE OF THE SERVICES IN THE UNITED STATES  
 18 EXCEEDS BY AN UNREASONABLE AMOUNT THE PRICE OF SERVICES PROVIDED  
 19 OUTSIDE THE UNITED STATES; OR

20                   (III) THE QUALITY OF THE SERVICES IN THE UNITED STATES  
 21 IS SUBSTANTIALLY LESS THAN THE QUALITY OF COMPARABLY PRICED SERVICES  
 22 PROVIDED OUTSIDE THE UNITED STATES.

23                   (3) THE BOARD SHALL ADOPT REGULATIONS DEFINING THE  
 24 FOLLOWING TERMS FOR THE PURPOSES OF THIS SUBSECTION:

25                   (I) "UNREASONABLE AMOUNT"; AND

26                   (II) "SUBSTANTIALLY LESS".

27                   ~~SUBTITLE 4. DISCLOSURE OF THE RELOCATION OF JOBS TO A FOREIGN~~  
 28                   ~~COUNTRY.~~

~~THIS SUBTITLE APPLIES TO A PROCUREMENT CONTRACT WITH AN ESTIMATED VALUE OF \$2,000,000 OR MORE.~~

~~11-402.~~

~~WHEN A PROSPECTIVE BIDDER OR OFFEROR SUBMITS A BID OR AN OFFER TO A UNIT, THE BIDDER OR OFFEROR SHALL NOTIFY THE DEPARTMENT OF GENERAL SERVICES WHETHER THE BIDDER OR OFFEROR:~~

~~(1) HAS PLANS, AT THE TIME THE BID OR OFFER IS SUBMITTED, TO RELOCATE JOBS FROM THE UNITED STATES TO A FOREIGN COUNTRY; OR~~

~~(2) WILL BE SUBCONTRACTING WITH A CONTRACTOR THAT HAS PLANS, AT THE TIME THE BID OR OFFER IS SUBMITTED, TO RELOCATE JOBS FROM THE UNITED STATES TO A FOREIGN COUNTRY.~~

~~11-403.~~

~~(A) THIS SECTION APPLIES TO A PROSPECTIVE BIDDER OR OFFEROR THAT DISCLOSED UNDER § 11-402 OF THIS SUBTITLE THAT THE BIDDER OR OFFEROR:~~

~~(1) HAD PLANS, AT THE TIME THE BID OR OFFER WAS SUBMITTED, TO RELOCATE JOBS FROM THE UNITED STATES TO A FOREIGN COUNTRY; OR~~

~~(2) WOULD BE SUBCONTRACTING WITH A CONTRACTOR THAT HAD PLANS, AT THE TIME THE BID OR OFFER WAS SUBMITTED, TO RELOCATE JOBS FROM THE UNITED STATES TO A FOREIGN COUNTRY.~~

~~(B) A PROSPECTIVE BIDDER OR OFFEROR THAT IS AWARDED A CONTRACT SHALL NOTIFY THE DEPARTMENT OF GENERAL SERVICES WITHIN 60 DAYS AFTER THE BIDDER OR OFFEROR RELOCATES JOBS:~~

~~(1) FROM THE UNITED STATES TO A FOREIGN COUNTRY; OR~~

~~(2) TO THE UNITED STATES FROM A FOREIGN COUNTRY.~~

~~(C) (1) A PROSPECTIVE BIDDER OR OFFEROR THAT IS AWARDED A CONTRACT:~~

~~(i) MAY NOT RECEIVE A STATE GRANT, A STATE GUARANTEED LOAN, A TAX BENEFIT, OR ANY OTHER BENEFIT OR INCENTIVE FROM THE STATE; AND~~

1                   ~~(H) SHALL REPAY ANY BENEFIT OR INCENTIVE RECEIVED~~  
 2 ~~FROM THE STATE WITHIN 5 YEARS BEFORE THE DISCLOSURE UNDER § 11-402~~  
 3 ~~OF THIS SUBTITLE WAS MADE.~~

4                   ~~(2) THE REPAYMENT OF A BENEFIT OR AN INCENTIVE REQUIRED~~  
 5 ~~UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE MADE WITHIN 3 YEARS~~  
 6 ~~AFTER THE DISCLOSURE UNDER § 11-402 OF THIS SUBTITLE WAS MADE.~~

7           SECTION 2. AND BE IT FURTHER ENACTED, That a presently existing  
 8 obligation or contract right may not be impaired in any way by this Act.

9           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
 10 October 1, 2012. ~~It shall remain effective for a period of 3 years and, at the end of~~  
 11 ~~September 30, 2015, with no further action required by the General Assembly, this Act~~  
 12 ~~shall be abrogated and of no further force and effect.~~

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.